



Welsh Government Consultation Healthy Food Environment

Consultation response

Deadline 1 September 2022

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Introduction

CIEH welcomes this consultation on proposals to make the food environment in Wales healthier and recognises it as an important step in shifting the balance in the food environment to making the healthier choice the easy choice and for people to feel enabled to make positive lifestyle choices to sustain or maintain a healthy weight.

Overweight and obesity is a public health threat and the direct cause of many health problems which place significant demands on the NHS. Choosing a healthy diet has become increasingly challenging as we are exposed to foods which are cheap, convenient and difficult to resist. Much of this food is high in fat, sugar or salt, and as a nation we consume too much food which is damaging our health. Without government intervention the incidence of overweight and obesity will almost certainly get worse.

Environmental health practitioners are ideally placed to influence the Public Health Agenda in Wales. Along with trading standards professionals they deliver a range of interventions at food businesses to ensure food is safe and what it says it is.

In 2008 the Chartered Institute of Environmental Health worked collaboratively with local authority Environmental Health Practitioners and the Food Standards Agency to develop the *Healthy Options Award*¹. The Award (bronze, silver and gold) encourages food businesses to provide healthier options to customers, through the use of healthier catering practices, increasing fruit, vegetables and starchy carbohydrates, as well as decreasing fat, especially saturated fat, sugar and salt. Sadly, pressures on local authority environmental health services saw many local authorities withdrawing from the scheme to focus on statutory work. but, with a renewed focus on dietary health and adequate funding, the scheme could be reviewed and relaunched.

To achieve the goal of reducing and preventing obesity, alongside any legislative restrictions, raising awareness through campaigns and education will be important in persuading and empowering people to make healthy choices.

Restricting value-based promotions for example during the current cost of living crisis may be perceived as insensitive to families and vulnerable groups struggling to make ends meet. And at a time when reliance on food banks has never been greater, gaining support from a public who may think their food bills are going to increase as a result of government intervention may present some challenges.

Food businesses are still feeling the effects of the pandemic when some were not permitted to operate and others had to diversify to maintain their presence. Now they are being impacted by shortages of commodities and staff and rising costs. It is therefore imperative that any proposals adopted are not cost prohibitive, compliance is achievable and requirements are not burdensome on business. This is in line with the requirements of the

¹ [HEALTH WALES: Cutting back the many menaces on the menu; Awards for restaurants offering healthy choice. The Free Library April 2008](#)

Deregulation Act 2015 to fully consider the promotion of economic growth when making both policy decisions and individual decisions on business operators.

Throughout the consultation document, the point is made that proposals have been considered in line with those already in place in England under the Food (Promotion and Placement) (England) Regulations 2021. This approach is considered the most pragmatic to ensure consistency and ease of compliance for those businesses that operate across England and Wales and to assist enforcement officers when providing guidance and support to businesses affected by any restrictions.

It should be noted that ambiguity in the guidance developed in England has led to confusion in interpretation, particularly around distances from points of entry, points of entry in premises with multiple access points and certain foods within scope. It is hoped that consideration will be given to these factors if the proposals are implemented in Wales.

Theme 1: Healthier Shopping Baskets - Making the Healthy Choice the Easy Choice

Q1. Should we introduce legislation to restrict the following types of promotion of High Fat Salt or Sugar products?

- temporary price reductions
- multi-buy offers
- volume offers

Yes

The introduction of legislation restricting the promotion of high fat salt and sugar products is a proportionate response to the obesity crisis in the UK. We support restrictions on volume offers, multi-buys and temporary price reductions although it will be important to exempt foods that are reduced in price because they are approaching their 'use by' and 'best before' dates. Without this exemption, a foreseeable consequence would be an increase in food waste which has the potential to compromise goals set out in *Towards Zero Waste*, the overarching waste strategy document for Wales.

Q2. Should we introduce legislation to restrict the placement of HFSS products in the following retail areas?

- store entrance
- at the till
- end of aisle
- free standing display units

Are there any other locations you think we should consider?

Yes

Please explain

Yes. This would be consistent with regulations in England and would enable businesses trading in England and Wales to develop consistent policies and store layouts.

Q3. How should we determine which categories of food should be caught by proposal 1 and 2 restrictions?

Option A – Products high in fat, sugar or salt which are of most concern to childhood obesity

Option B – All Products high in fat, sugar or salt

[both options to restrict the promotion of HFSS products captured by the Sugar Reduction Programme, Calorie Reduction Programme and Soft Drink Industry Levy based on the Nutrient Profiling Model]

Other- please give details

Please explain

The intention of the proposals is to reduce and eventually prevent childhood obesity so it follows that the foods within scope should initially be restricted to those that appeal to children rather than all products high in fat, sugar or salt.

However, for consistency the same categories of food used in England should fall within scope of restrictions. Deviating from England requirements has the potential to cause confusion although we are aware that the introduction of legislation in England has presented challenges for certain sectors such as supermarkets as they try to determine whether products are in or out of scope of the regulations.

At the same time as removing incentives to buy less healthy foods, we would like to see an increase in the number of healthy products being placed on promotion and campaigns to encourage healthier food choices.

Q4. Should restrictions for both proposal 1- value promotions and proposal 2- location promotions cover online purchasing?

Yes/No/Not sure

Please explain

Not sure.

To ensure a level playing field and recognising the growing trend to shop online we agree that these restrictions should apply to online shopping. This would be consistent with requirements in England.

However, we have some concerns about the impact of the cost of living increase which will drive consumers to seek out special offers to put food on their tables. Striking a balance between health promotion/healthy foods and feeding a family on a limited budget needs to be considered.

Q5. Should the following exemptions apply for value promotion restrictions (proposal 1)?

- micro and small businesses (unless they are part of a symbol group with 50+ employees)
- close to use-by-date price reductions
- non-pre-packed products
- other

Yes

Please explain

As these exemptions are consistent with the position in England they are considered appropriate.

In addition to “use by date” products, we would advocate permitting the short term supply of reduced “best before” date products (approaching end date) to reduce waste.

Q6. Should the following exemptions apply for location promotion restrictions (proposal 2)?

- micro and small businesses (unless they are part of a symbol group with 50+ employees)
- stores that are smaller than 185.8 square metres (2,000 square feet) (even if they employ more than 50 employees or are part of a symbol group which does)
- specialist retailers that sell one type of food product category, for example, chocolatiers or sweet shops
- other

Yes

Please explain

These exemptions should replicate the position in England to ensure a consistent approach, particularly important where large retail chains and symbol group companies e.g. Spar, Lonsis operate across both nations.

Implementation of the proposals by micro and small independent businesses will be a challenge due to the layout and limited space available in the premises. There are also likely to be significant cost implications for these businesses at a time when they are already experiencing rising costs.

Guidance on what would constitute an employee would be welcomed for businesses, as some trade sectors may take on additional staff at certain points throughout the year.

Premises such as chocolatiers and sweet shops should be discouraged from offering multi-buy special offers.

Theme 2: Healthier Eating Out of the Home – Understanding how it contributes to your weight

Q7. Should we mandate calorie labelling in all out of home settings regardless of the size of business?

No

Please explain

Mandatory calorie labelling should be introduced for businesses subject to a minimum size requirement e.g. restaurants, cafés and takeaways with 250 or more employees. This would be consistent with England. Very small micro businesses will either need to invest in software packages to calculate calories or use accepted, reliable data from sources which is likely to be costly and burdensome. These businesses tend not to have the regular and controlled supply lines available to larger businesses and source products from a number of suppliers based on cost. Whilst menus may not be subject to regular change, the ingredients used may be subject to significant change.

The necessary software and reprinting costs will likely be disproportionate for this sector and the need for consistent calorie information may have an adverse impact on innovation as some businesses may be reluctant to try new suppliers and/or ingredients due to the perceived costs of altering menus and associated signage. These perceived costs may be easier for larger businesses to absorb.

There will need to be clear guidance on permitted tolerances for calorie labelling as it is widely recognised that foods do not always contain the exact quantity of nutrients declared on the label, owing to natural variation, and variations during food production and storage. Additionally, existing Regulations allow exemptions from nutritional information labelling on certain foods so the information may not always be readily available to the business preparing the meal.

Q8. Should energy labelling be limited to calories (Kcals)?

Yes

Please explain

Although nutrition information provided on labelling generally refers to energy using both kJ and kcal, UK consumers appear to have a greater understanding of calories than kilojoules.

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Q9. Should menus marketed specifically at children be exempt from calorie labelling?

Yes

If no how do you think this information should be presented?

Energy requirements differ for children at various stages of their development and it is likely young children will not understand the calorie information being displayed.

Increasing awareness of healthy food choices through education and campaigns will help parents and carers make informed choices for children. As children get older and make more of their own choices, calorie information could be provided on request. There are concerns that calorie labelling or other methods of visually illustrating healthy options may have a negative impact on children and adolescents with Body Dysmorphic Disorder leading to eating disorders.

Q10. Should we mandate businesses to make menus without calorie labelling available at request?

Yes

Are there other mitigations we could put in place for people with eating disorders?

Please explain

If businesses are compelled to provide calorie information on menus, copies of the menu without calorie information should also be available. However, further consideration may need to be given as to which menu is available on request as someone with an eating disorder may be uncomfortable requesting a specific menu.

The provision of a QR code on a standard menu which links to a calorie marked menu should be considered.

A further option is for businesses that take online table bookings to be encouraged to ask in advance whether a calorie/non-calorie marked menu is needed, this could also be added to the 'do you have an allergen' conversation when diners are taken to their tables.

Q11. Should the requirement to display calorie labelling extend to online sales?

Not sure

Please explain

Many businesses providing an online platform will be micro businesses, and as such included in any considered exemption, although with the increased use of delivery services it is also

accepted that it is possible to get a takeaway from other larger food businesses including chain restaurants.

Meals supplied and advertised by small businesses are likely to be subject to some variation as there tends to be little in the way of formal recipes or quality control in the preparation of dishes. Therefore, the calorie information would be an approximation at best.

Many small businesses now affiliate with on-line aggregators e.g. Just Eat, Deliveroo, etc. so the aggregators could be requested to play more of a supportive role to the businesses they partner with. Some aggregators provide calorie information in their on-line menus.

Q12. Should we prohibit free refills of sugary soft drinks in the out of home sector?

Yes

Please explain

The consumption of sugary soft drinks contributes to both increased weight and tooth decay. Children are also incentivised by the novelty of self-service drinks and the choice of varieties and flavours. Good practice has been highlighted where free refills are only available for sugar-free varieties. Legislating for this may be a pragmatic way forward.

Q13. Should we restrict larger portion sizes of sugary soft drinks in the out of home sector?

Yes

Please explain

If yes, do you think this should be limited to 1 pint (0.57 litres)?

Other

Please explain

The consumption of sugary drinks contributes to increased weight and tooth decay so restricting portion sizes to 1 pint would contribute to a reduction in volumes consumed.

Q14. Should the following settings be excluded from both the calorie labelling and soft drink restriction requirements?

- schools and colleges
- early years and childcare settings
- hospital in-patients

- care homes and settings
- charity sales
- other

Yes

Please explain

Yes, these settings should be excluded from the calorie labelling and soft drink restriction requirement.

The sale of cakes and drinks containing sugar at charity sales tend to be restricted in their frequency and location. Furthermore, the supply of food on an occasional and small-scale basis is unlikely to trigger the requirement to register as a food business operator. Whilst media campaigns and guidance can be targeted at the charity sector to encourage the provision of healthier options, local authorities are unlikely to have any direct engagement with the sector in the absence of a requirement to register as a food business.

Q15. Should small and medium out of home businesses be covered by both the calorie labelling and soft drink restriction requirements?

No

Please explain

See previous comments

Q16. Should the following products be exempt from the calorie labelling requirement?

- menu items for sale for 30 days or less items prepacked off premises (which already displayed nutrition information)
- condiments added by the customer
- loose fruit or vegetables
- other

Yes

Please explain

We generally agree that the products listed should be excluded from calorie labelling requirements, although in the case of prepacked food the exemption should only apply if it is labelled with nutritional information. Some prepacked foods do not require nutritional information as retained Regulation (EU) 1169/2011 allows for prepacked food to be exempt

from nutritional information in certain circumstances. The most significant exemption being food, including handcrafted food, directly supplied by the manufacturer in small quantities to the final consumer or to local retail establishments directly supplying the final consumer.

If a small local manufacturer supplies prepacked foods to a restaurant, then it may not have nutritional information on the label. In these circumstances will the seller need to obtain calorie information to present to the consumer or does the fact that it is prepacked make it exempt? Guidance/legislation will need to clarify the position and legal responsibilities.

Theme 3: Healthier Local Food Environments – Shifting the Balance

Q17. What support and measures could we put in place to help improve the availability of healthier options within local areas?

Please explain

Consideration needs to be given to **food deserts**, i.e. remote communities with just one local shop that has a limited supply (or no supply) of healthy foods. Consumers need to travel to other towns to visit larger food premises such as supermarkets to purchase a wider variety of food including healthy foods. This is not always feasible for families on low income, those with limited mobility and other health problems, or those that do not have a car or access to public transport. This issue is extremely difficult to tackle. There needs to be a catalogue of approaches, including food cooperatives, delivery of healthy food boxes that include fruit and vegetables and possibly include recipe cards, community allotment produce sharing schemes, and the encouragement of food business operators to offer a wider variety of healthy foods, including frozen fruit and vegetable alternatives.

Secondly, there is the issue of food businesses including cafes and restaurants etc. selling ready to eat foods, that are not healthy, and where more can be done to improve the variety and nutritional content of their menus.

As outlined earlier in this response, a **Wales Healthy Options Award Scheme** was developed in 2008. This was very successful, welcomed by businesses and all authorities in Wales participated in the running and promotion of the scheme. However, with resource pressures many struggled to maintain the scheme.

The Healthy Options Award was developed to reward caterers who make it easier for their customers to make healthy choices when eating out. There are three levels of Healthy Option Awards: Bronze, Silver and Gold.

The award was assessed and managed by local authority EHOs in which the premise is trading (some LAs involved dietitians from their local health boards). The Award aimed to encourage food businesses to provide healthier options to customers, through the use of healthier catering practices, increasing fruit, vegetables and starchy carbohydrates, as well as decreasing fat, especially saturated fat, sugar and salt. It also recognises provision of healthy options for children, rewards staff training, promotion and marketing of healthier options. The award was open to all types of catering premises that catered for the general public. The premises must be broadly compliant with food hygiene legislation i.e. score a rating of 3, 4 or 5 under the Food Hygiene Rating Scheme to participate in the scheme.

Businesses benefited from public recognition for achieving the award, providing them with a competitive edge. They also benefited from increased customer satisfaction

as the demand for healthier choices continued to grow and many food manufacturers and retailers reported a growth in sales.

Welsh Government resources and funding could be provided to advertise and fund a national healthy option award scheme. With suitable and ongoing national advertising, the scheme could be seen by Welsh consumers as something to look for when choosing to buy food and whilst eating out of the home, and businesses will hopefully see the benefits of joining and maintaining appropriate healthy food options in playing their part in contributing to the Healthy Weight: Healthy Wales obesity strategy.

Whilst the return of the Healthy Options Award Scheme (or an updated version) would be welcomed, it is unlikely it could be delivered within existing local authority environmental health resources. Workforce pressures were recently highlighted in a Directors of Public Protection in Wales report on the workforce ('Public Protection Services in Wales – Building for the Future') which emphasised the need for Welsh Government investment to build capacity and resilience in local authority public protection services.

Q18. Should we review existing planning and licensing support, including guidance, to address the distribution of Hot Food Takeaways, particularly close to secondary schools and colleges?

Yes

Please explain

The Licensing Act 2003 currently can only be utilised to control the location of certain types of licensable activities if a local authority can demonstrate there is a cumulative impact on a particular area. The Act defines "cumulative impact" as "the impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated on one area. The cumulative impact of a licensed premises on the production of the licensing objectives is a proper matter for a Licensing Authority to consider in developing licensing policy statement."

The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

None of these objectives relate to health that includes weight or obesity.

The Licensing Act was enacted by central government and is applicable across England and Wales and therefore changes to the Act for the purposes proposed are structurally difficult. It is therefore considered that the existing Licensing Act is unlikely to be useful in controlling

hot food takeaways next to schools and colleges unless there is an impact on the licensing objectives.

Planning Policy Wales could potentially be a conduit for controlling Hot Food Takeaways next to schools and colleges. Local Development Plans and introduction of appropriate Supplementary Planning Guidance to limit the approval of planning applications for certain uses of premises, where the proliferation of similar premises is having a detrimental effect in a particular area. The current planning permission: use classes is problematic in that “A3 Food and drink” is a broad category that covers restaurants, snack bars and café’s, drinking establishment and take-aways. Further exploration would need to be undertaken in this area as amendments to current planning application categories would be required to specifically identify those identified in this proposal. Consultation with Local Planning Authorities would be recommended to explore the policy context, use classes and potentially the suitability of the use of Health Impact Assessments to control locations of Hot Food Take-aways. It would also be useful to obtain opinion from the Planning Inspectorate.

Respondent information

Q19. Are you responding as an individual, or on behalf of an organisation or business? (select only one option)

- Individual
- **On behalf of an organisation**
- On behalf of a business
- Other, please specific

Q20. If answering on behalf of a business, what is the size of the business? (select only one option)

- Micro business (0-9 employees)
- Small business (10 – 49 employees)
- Medium business (50 – 249 employees)
- Large business (250 employees or more)
- Don't know

Other potential measures and wider impacts

Q.21 Please provide details of other options you feel could help drive positive change in the food environment, and support people in Wales to make healthier choices.

Are there any other matters you would like to raise?

For the strategy to be a success and achieve the goal of reducing and preventing obesity across Wales, then alongside any legislative restrictions on promotions or displays of food, there needs to be better education of society as a whole to encourage making healthier choices and achieving the associated long term benefits of any changes. The introduction of a Wales Heathy Option Award scheme with recognisable branding and standards, coupled with business seminars on different cooking practices aimed at reformulating dishes could all be of benefit.

Equality Questions

Q22. Do you think the proposals in this consultation document might have an effect on the following?

- Those living in rural areas
- Specific socio-economic groups
- Children and young people
- Equality in relation to;
 - Age
 - Sex
 - Race
 - Religion
 - Sexual orientation
 - Pregnancy and maternity
 - Disability
 - Gender reassignment
 - Marriage/civil partnership
 -

If yes, please explain

Yes, it has already been reported in the consultation that those on lower incomes tend to gravitate to HFSS foods and those on promotion. As has been suggested throughout the response, guidance and education on healthier choices needs to form part of any ongoing work as part of the strategy.

Q23. We would like to know your views on the effects the consultation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q24. Are there any other groups within society not already referenced you think any of the proposals would have an impact on?

Business Support and Impact

Q25. What support could be provided to help your business prepare for the following proposals;

- promotion restrictions (Theme 1- proposals 1 and 2)
- mandatory display of calories (Theme 2-proposal 3)
- place restrictions of the servings of sugary soft drink (Theme 2- proposal 4)
- limits on hot food takeaways near schools and colleges (Theme 3- proposal 6)

Please Explain

Q26. We have calculated illustrative transition costs in both impact assessments. Do these calculations reflect a fair assessment of the costs that would be faced by your organisation/business?

Yes/No

If no, please provide any further evidence which could be used to improve our estimates. If you are referring to a specific calculation in one of the IAs, please state which one(s).

Q27. Do you have any further evidence or data you wish to submit for us to consider for our final impact assessment or any specific comments on the methodology or assumptions made?

Yes

If yes, please provide further evidence which could be used to improve our estimates. If you are referring to a specific IA question or calculation, please state which one(s).

The impact assessments indicate that it is trading standards officers who will be responsible for enforcement of these provisions. It should be noted that in approximately 50% of local authorities in Wales environmental health officers deliver food standards controls and would likely be responsible for enforcement. Some of the assumptions in the impact assessments need to be reviewed relating to inspection frequency and time to assess compliance.

It is noted that further consultation is planned around enforcement, but it should be noted that there is currently a Public Protection workforce crisis in local authorities and there is little to no capacity to absorb additional burdens.

It should also be noted that the Food Standards Agency is reviewing the food standards delivery model as part of its Achieving Business Compliance programme. This may have an impact on the frequency of visits undertaken to some of the premises likely to be affected by the proposals.